ing over the road at a time when actually engaged in performing duties for the company, but a passenger while not so engaged but riding from one place to another, even though continuing all the while in a popular sense in the employment of the company." 5 AM. & ENG. ENCY. LAW 510 and cases cited.

MUNICIPAL CORPORATIONS—CITY ORDINANCES—STATE LAW—SALE OF MILK. —Prior to 1909, there had been in effect in the city of St. Louis an ordinance requiring that all milk sold within the city should contain not less than 8.5 per cent. of non-fatty solids. In 1909, the General Assembly enacted a law requiring milk sold within the state to contain not less than 8.75 per cent. of such solids. After the passage of this act, defendant was convicted under the municipal ordinance of having offered for sale milk containing less than 8.5 per cent. of non-fatty solids. The case was brought to the Supreme Court of Missouri for the determination of the sole question whether such ordinance had become invalidated by the subsequent law. *Held,* the ordinance and the statute were not inconsistent with each other, and the passage of the latter did not affect the validity of the former. Both continued in force, and the conviction under the ordinance was sustained. *City of St. Louis* v. *Scheer* (Mo. 1911) 139 S. W. 434.

The major portion of the opinion relates to the repeal of a municipal ordinance by a state statute covering the same ground. The general rule is followed as laid down in 21 AM. & ENG. ENCY. LAW, Ed. 2, 1002. "The passage of a state law upon a certain subject does not abrogate pre-existing ordinances of municipalities upon the same subject unless they are inconsistent with the statute." *State* v. *Labatut,* 39 La. Ann. 513; *New York* v. *Hyatt,* 3 E. D. Smith, 156. See also 28 CYC. 387, and note. Contra, *State* v. *Langston,* 88 N. C. 692; *Strauss* v. *City of Waycross,* 97 Ga. 475, 25 S. E. 329. The court decline to discuss the matter of the consistency of the two enactments, but acknowledge themselves bound by their decisions in *St. Louis* v. *Klausmeier,* 213 Mo. 119, 112 S. W. 516, and *City of St. Louis* v. *Ameln* (Mo. 1911) 139 S. W. 429. The validity of the ordinance was further attacked as being contrary to the public policy of the state as expressed by the legislative decree. The court's answer to this argument does not carry a great deal of conviction with it. It is in substance this: By maintaining the ordinance in effect, the city does not invite a violation of the statute. It merely says that it will use its officers and courts to enforce the statute only up to the limit of its own ordinance, and if the state desires to do more, it can do so by its own proper officials. This would seem to be a rather strange doctrine to be sanctioned by so high authority. It is denominated by counsel as "shocking" and "paralyzing." In a similar situation, the California Supreme Court held that if a city ordinance allows milk to be sold which contains a less per cent of fats than that exacted by the state law, there would be presented a plain case of conflict between the two such as would render the ordinance void The municipality would be attempting to declare legal what the state had declared unlawful. *Ex parte Hoffman,* 155 Cal. 114, 99 Pac. 517. The question upon which cases of this kind usually turn, namely that of jurisdiction, is only hinted at and but superficially discussed in the principal case. The statute in

question provided (Mo. LAWS, 1909, p. 119) that all prosecutions for violation of its terms should be brought by the State through its prosecuting attorney. As to whether this rendered void a prosecution in any other way under any other authority, the courts are in hopeless conflict. Some hold the remedies to be concurrent. *People* v. *Detroit White Lead Works*, 82 Mich. 471, 46 N. W. 735, 9 L. R. A. 722. *State ex rel. Reid* v. *Walbridge*, 199 Mo. 383, 24 S. W. 457, 41 Am. St. Rep. 663. It is noteworthy that, in practically all cases holding as above, there is some legislative authority in the municipality to regulate matters already the subject of state legislation. COOLEY, CONST. LIM., Ed. 4, p. 242 and cases cited. DILLON, MUN. CORP., Ed. 5, p. 966. On the other hand there is a respectable line of authority holding that although a given act was by a valid municipal ordinance made an offense against the corporation, the subsequent enactment by the general assembly of a statute making the identical act a crime or misdemeanor deprived the municipal authorities (they having no jurisdiction over state offenses) of the power to try and punish offenders for committing the act. *Strauss* v. *City of Waycross, supra. Ex parte Wickson* (Tex. Cr. App.) 47 S. W. 643. And when the state has assumed jurisdiction in the regulation of any matter, this ipso facto removes the same from municipal regulation or punishment. *Judy* v. *Lashley*, 50 W. Va. 628, 41 S. E. 197, 57 L. R. A. 413. *Bear* v. *City of Cedar Rapids*, 147 Iowa 341, 126 N. W. 324, 27 L. R. A. (N. S.) 1150. Whether in the principal case the charter of the City of St. Louis granted the municipality power to regulate matters after they became the subject of state regulation, does not appear from the report of the case.

SALES—INSPECTION BY VENDEE AS AFFECTING IMPLIED WARRANTY OF TITLE. —Defendant sold certain barrels of mackerel to plaintiff. One of plaintiff's employes, McKinnon, visited defendant's place of business and there had opportunity to inspect the shipment, but relying on the defendant's description, made a very superficial examination. The sale was completed by telegram, and the fish were shipped. Plaintiff re-shipped them to a Boston agency for re-sale, from which re-sales several barrels were returned, the claim being made that the mackerel in the middle of the barrels were rusty. Examination proved this to be the fact and plaintiff sued for breach of warranty. On trial plaintiff offered evidence of a custom in the fish trade that when a party purchases a lot of mackerel he is supposed to receive "clear" fish. This was admitted over the objection of defendant, who claimed that this was a sale of specific barrels which plaintiff inspected, and that having received those barrels this is an end to his case. The overruling of the defendant's objection was assigned as error. *Held*, that in the sale of specific goods as goods of a specified description, the description amounts to a warranty that they are as described. It was competent for the plaintiff to prove that by custom the word "mackerel" had a clearly defined trade meaning, *i. e.* "clear mackerel." And the fact that the specific goods were open to inspection and actually inspected by the purchaser cannot deprive him of his right to rely on such a description as a warranty, if the defect was such a one as would not be and was not detected. *Procter et al.* v. *Atlantic Fish Co. Ltd.* (Mass. 1911) 94 N. E. 281.